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File identification

Resolution of the rights protection procedure no. PT 1/2020, urged against the Hospital Clínic de Barcelona (Hospital Casa de la Maternitat).

Background

1.- On 09/01/2020 the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the claimant), for which he made a claim for the alleged neglect of the right of access, which he had previously exercised on two occasions, specifically, on 04/05/2019 and 14/ 10/2019 in front of the Hospital Clínic de Barcelona "Hospital Casa de la Maternitat" (henceforth, the HCB).

The claimant provided various documentation relating to the exercise of this right, a request to which the claimed entity would not have responded within the one-month period provided for in article 12 of Regulation (EU) 2016/679 of European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and to the free circulation of these (hereafter, the RGPD).

2.- On 01/16/2020, the Authority forwarded said documentation to the HCB data protection officer, so that he would respond to the claim within one month, and that forward this response to the Authority, in accordance with the provisions of article 37.2 of Organic Law 3/2018, of December 5, on Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD).

3.- On 02/10/2020, the HCB provided the Authority with a copy of the letter dated 02/04/2020 addressed to the claimant, with which it was indicated that all the requested documentation, with the exception of *"the Report of the department of informatics and medical records of the different accesses that have been produced in the mentioned documents, making special mention of the deletion or modification of some entry or register"*, given that the HCB stated that *"we cannot provide you with this information, since in accordance with the provisions of Article 15 of Regulation (EU) 2016/679 on the Protection of Personal Data, it is not part of the information to which you have the right to access."* Likewise, the HCB indicated to the claimant

that *"the HCB has an information access system that limits the information that its professionals can access, however, if you suspect that there is specific illegitimate access to your data, we ask that you notify us so that we can resolve it"*.

Fundamentals of Law

1.- The director of the Catalan Data Protection Authority is competent to resolve this procedure, in accordance with articles 5.b) and 8.2.b) of Law 32/2010, of October 1 , of the Catalan Data Protection Authority.

2.- The claim that is resolved here was formulated with respect to a request to exercise the right of access that had been presented to the claimed entity on 05/04/2019, in accordance with the provisions of article 15 of the RGPD, section 1 of which provides the following:

"1. The interested party will have the right to obtain from the controller confirmation of whether or not personal data concerning him or her are being processed and, in such case, the right to access personal data and the following information:

- a) the purposes of the treatment;*
- b) the categories of personal data in question;*
- c) the recipients or the categories of recipients to whom the personal data was communicated or will be communicated, in particular recipients in third parties or international organizations;*
- d) if possible, the expected period of personal data conservation or, if not possible, the criteria used to determine this period;*
- e) the existence of the right to request from the person in charge the rectification or suppression of personal data or the limitation of the treatment of personal data relating to the interested party, or to oppose said treatment;*
- f) the right to present a claim before a control authority;*
- g) when the personal data has not been obtained from the interested party, any available information about its origin;*
- h) the existence of automated decisions, including profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party.*

(...)."

Also, regarding the rights regulated in articles 15 to 22, article 12.3 of the same RGPD determines that the data controller must provide the interested party with all the information related to their actions derived from the exercise request of the right, within one month from the receipt of said request. For its part, article 12.4 of the RGPD establishes that in the event that the person in charge does not proceed with the request, within the same period of one month he must inform the requesting person of the reasons for which has not resolved the request and of the possibility of presenting a claim before the Authority and of taking legal action, communication that the claimed entity also did not carry out.

In relation to the above, article 37.2 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), empowers the control authorities to forward claims received to the delegated person for data protection of the person in charge of the treatment to which the claim refers, in the following terms:

"2. When the affected person submits a claim to the Spanish Data Protection Agency or, where appropriate, to the autonomous authorities of

data protection, they can refer the claim to the data protection delegate in order for him to respond within one month. If after this period the data protection delegate has not communicated to the competent data protection authority the response given to the claim, this authority must continue the procedure in accordance with the provisions of Title VIII of this Law organic and its rules of deployment".

Apart from the regulation referred to above, in the case analyzed here, it is also necessary to take into account the applicable health regulations. Specifically, the Basic State Law 41/2002, of November 14, on Patient Autonomy, establishes in its article 18 the right of access to the clinical history in the following terms:

"Rights of access to the clinical

history 1. The patient has the right of access, with the reservations indicated in section 3 of this article, to the documentation of the clinical history and to obtain a copy of the data contained therein . Health centers must regulate the procedure that guarantees the observance of these rights.

2. The patient's right of access to the clinical history can also be exercised by duly accredited representation."

3. The patient's right of access to the clinical history documentation cannot be exercised to the detriment of the right of third parties to the confidentiality of the data contained therein collected in the patient's therapeutic interest, nor to the detriment of the right of professionals who participate in its preparation, who can object to the right of access to the reservation of their subjective annotations.

4. Health centers and private practitioners must only provide access to the medical records of deceased patients to people who are related to them, for family or de facto reasons, unless the deceased has expressly prohibited it and be accredited in this way. In any case, a third party's access to the medical history motivated by a risk to their health must be limited to the relevant data. Information that affects the privacy of the deceased or the subjective notes of professionals must not be provided, nor that harms third parties."

For its part, article 13 of Catalan Law 21/2000, of December 29, on Patient Autonomy and Rights to Information and Clinical Documentation, determines the following:

"Rights of access to the medical

history 1. With the reservations noted in section 2 of this article, the patient has the right to access the medical history documentation described in article 10 and to obtain a copy of the data contained therein. It is up to the health centers to regulate the procedure to guarantee access to the clinical history.

2. The patient's right of access to the documentation of the clinical history can never be to the detriment of the right of third parties to the confidentiality of their data appearing in said documentation, nor the right of the

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professionals who have intervened in the preparation of this, who can invoke the reservation of their observations, appreciations or subjective annotations.

3. The patient's right of access to the clinical history can also be exercised by representation, as long as it is duly accredited."

In relation to the above, article 16.1 of Law 32/2010, of the Catalan Data Protection Authority, regarding the protection of the rights provided for by the regulations on personal data protection, provides the following:

"1. Interested persons who are denied, in part or in full, the exercise of their rights of access, rectification, cancellation or opposition, or who may understand that their request has been rejected due to the fact that it has not been resolved within the established deadline, they can submit a claim to the Catalan Data Protection Authority."

3.- Next it is necessary to analyze whether the HCB has resolved and notified, within the period provided for by the applicable regulations, the response to the request made by the person claiming, on 04/05/2019, since precisely the reason for complaint of the person who started the present legal protection procedure was the fact of not having obtained a response within the period provided for the purpose.

In this regard, it is certified that on 04/05/2019, the person making the claim sent the request for access to data to the HCB, a request which, in the face of the lack of response, he sent again for the second time on 14/10/2019, and regarding which he did not receive a response from the HCB, prompting the claimant to file the corresponding claim with this Authority.

As has been made clear in the antecedents of this resolution, it is not until the referral of the claim to the delegated person for data protection of the claimed entity, as can be seen from the letter of the HCB sent to this Authority on 02/10/2020, that the right exercised by the person claiming has been effective, to the extent that he has been granted the requested access to all the information requested, with the exception of the corresponding to "the Report of the department of informatics and clinical records of the different accesses that have occurred in the aforementioned documents, making special mention of the deletion or modification of any entry or register", given that said information is not included among the contained in article 15 of the RGPD. This substantive issue will be analyzed in the following legal basis.

In light of what has been set out here, it is clear that the HCB's response to the access request that is the subject of this claim was clearly untimely, as it should have been dealt with within the deadline of the month established in article 12.3 of the RGPD, that is to say, at the latest on 06/05/2019.

4.- We then proceed to analyze whether the information provided by the HCB to the claimant conforms to the regulations mentioned in the 2nd legal basis.

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As has been said, it is proven in the procedure that the claimant twice exercised the right of access before the HCB, in relation to all the data that was included in his son's medical history, as well as in relation to the accesses to the clinical history that had been carried out, in particular, to "the Report of the department of informatics and medical records of the different accesses that have been produced in the mentioned documents, making special mention of the elimination or modification of some entry or register".

4.1. In relation to the data that was included in the medical history of the claimant's son, as can be seen from the letter of response from the HCB received by this Authority on 02/10/2020, it seems that it has been delivered to the person here claiming a copy of all the data contained in said medical history, with the exception of the information corresponding to the accesses.

However, this fact could not be ascertained by the Authority, since its receipt by the person concerned has not been accredited.

It is for this reason that the HCB will need to certify before this Authority the notification of the resolution to the person claiming, within 10 days, counters from the day after the notification of this resolution. Said accreditation will be made through the contribution, before the Authority, of the receipt of the notification by the person making the claim.

4.2. In relation to the delivery of documentation with information relating to access to the clinical history, specifically, to "the Report of the department of informatics and medical records of the different accesses that have been produced in the mentioned documents, making special mention to the elimination or modification of any entry or register", and as this Authority has examined on previous occasions (among others, in opinions CNS 40/2015, CNS 15/2016, CNS 8/2019 and CNS 53/2019), it should be borne in mind that the exercise of the right of access that the legislation on the protection of personal data recognizes for the interested parties, does not include the obligation to communicate the identity of the specific people who, as the entity's own staff responsible for the treatment, have been able to access the medical history. Otherwise, it does allow the data controller to know the data communications that may have occurred to external recipients.

Therefore, it can be concluded that the information related to "the Report of the department of informatics and medical records of the different accesses that have been produced in the mentioned documents, making special mention of the deletion or modification of some entry or register" , is not part of the right of access regulated by the data protection legislation, given that to attend to this request for information it would be necessary to go to a different route than the collection in article 15 of the RGPD, as it is determined in opinion CNS 53/2019 of this Authority, in which it was foreseen that the communication to the holder of the medical record of the information relating to the traceability of the accesses to their medical record, with an indication of the identity and category of the professionals who have accessed it, would find protection in the legal basis of article 6.1.c) of the RGPD, in r

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the provisions of article 24.2 of Law 19/2014 of December 29, on transparency, access to information and good governance. For this reason, the part of the claim made that refers to this information must be rejected, since it does not form part of the right of access contained in article 15 of the RGPD.

resolution

Therefore, I resolve:

First.- Declare the extemporaneity of the HCB's response to the request that is the subject of the present guardianship claim made by Mr. (...) against the HCB.

Second.- With respect to the substance, declare that the HCB has satisfied the claimant's right of access, conditioning this pronouncement on that said entity accrediting before this Authority the notification of the resolution to the claimant, so that it leads to carry out the action mentioned in the 4th legal basis, in the form and term provided for there.

Third.- Notify this resolution to the HCB and the person making the claim.

Fourth.- Order the publication of the Resolution on the Authority's website (www.apd.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with articles 26.2 of Law 32/2010, of October 1, of the Catalan Data Protection Authority and 14.3 of Decree 48/2003, of 20 February, by which the Statute of the Catalan Data Protection Agency is approved, the interested parties can file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, in the period of one month from the day after its notification, in accordance with the provisions of article 123 et seq. of Law 39/2015 or directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating administrative contentious jurisdiction.

Likewise, interested parties may file any other appeal they consider convenient for the defense of their interests.

The director,